City of Lafayette Committee Report

For:	City Council
By:	Charter City Committee
Date Written:	**July 6, 2009**
Meeting Date:	July 13, 2009
Subject:	Recommendation to City Council

Background

The Committee was asked to recommend whether Lafayette should become a charter city, and, if so, to propose a charter for consideration by the City Council and voters. The Committee was also asked to determine how the City Council can communicate with residents more effectively, using the charter city topic as an example.

Discussion

The Committee met nine times since April 2009. A list of Committee members and brief information about them is in Appendix A. The Committee initially studied information about charter cities from the League of California Cities and other sources. The Committee members proposed interviewing approximately 20 cities, most of which are Charter Cities, and a few that tried to become a Charter City and failed. Cities of all size, economic status, and geographical location were chosen. Some were deemed similar to Lafayette, while others were not.

Committee members successfully contacted and interviewed representatives from the following cities: Alameda, Davis, Del Mar, Folsom, Indian Wells, Monterey, Palo Alto, Piedmont, Rosemead, San Luis Obispo, San Rafael, San Ramon, Santa Maria, Solvang and Vallejo. Some of these cities have had their charters for well over 100 years. Others adopted their charters recently. Some of the charters were very brief, others were quite extensive. A brief charter captures the benefits of being a charter city, but places enabling laws in ordinances adopted by the Council rather than in the charter. Cities that place more detail in the charter must then get voter approval to amend the charter when changes are needed.

It appears from the research to date, that the best functioning charters are those that are short and allow for the greatest flexibility for the council. Staff and elected officials from cities with longer charters typically identified one or more elements of their charters that create problems. Short charters allow the city councils to enact policies by ordinance, much as general law cities do. Examples of such charters from San Ramon and Santa Maria are in Appendix B.

6B

Charter cities have wide discretion to set rules over municipal affairs that are not preempted by state government. Years ago, many actions of local government were deemed municipal affairs. However, all three branches of state government acted to reduce the areas of freedom provided to charter cities in recent decades. The benefits of a charter that still exist are summarized below along with their near term applicability to Lafayette:

1. **Property Transfer Tax**
   Voters in a charter city can approve a property transfer tax by a simple majority. Property transfer tax rates for general law cities are 0.055% of the value of the property being sold. Property transfer tax rates in charter cities range from that level to 1.3% (Piedmont). Neither figure includes the property transfer tax proceeds received by the County. Before Proposition 218 passed in 1996, City Councils of charter cities could adopt a property transfer tax by ordinance. Subsequently, voters must approve the tax. Of the 108 charter cities, 22 have increased their property transfer tax rates. The Committee believes a property transfer tax may be difficult, but not impossible to pass in the current economic environment. However, the recent take-aways of local money by state government creates an argument that Lafayette needs become more independent and identify opportunities to enhance local control and preserve locally-generated revenues so that service levels are not subject to the quality of governance in Sacramento.

2. **Local control over contracting provisions**
   General Law cities must accept the lowest responsible bid for capital project work over $5,000. Preparing bid packages, advertising, evaluating bids consumes substantial time of City staff and the process can often be lengthy. Many charter cities bypass some of these procedures for projects up to $100,000. They may also be able to select a vendor other than the lowest bidder if they believe the lowest bidder is not responsible. The charter city staff interviewed by Committee members thought these provisions of a charter are useful.

   However, The City of Lafayette has already adopted the Uniform Construction Cost Accounting Act, which allows the City to award a public works contract of $30,000 or less by negotiation, participate in informal bidding procedures for contracts of $125,000 or less by following certain noticing procedures, and to award public works contracts of $125,000 or more to the lowest responsible bidder. Therefore, because the City already enjoys most, if not all of the same benefits as a charter city in this regard, the Committee does not believe this alone is a compelling reason to become a charter city.

3. **Contract preferences**
   Charter cities have greater ability to direct contracts to local vendors than do general law cities. This would be a useful feature, but is unlikely to be a sufficient reason to become a charter city in the minds of voters.

4. **Election procedures**
   Charter cities have more flexibility regarding election procedures, e.g. installing term limits, creating elections by district, having a directly elected Mayor, having other directly elected officials, e.g., City Clerk and Treasurer, and adjusting or prohibiting the pay of City elected

officials. Historically, there has been minimal dissatisfaction with Lafayette's current procedures and the Committee does not recommend that a charter be adopted to obtain these benefits.

5. **Prevailing wage**
   Charter cities can pay non-prevailing wages for capital projects that involve only City funds. However, no charter cities in the Bay Area do so, and efforts by other Charter Cities to adopt a charter that do not commit the City to pay prevailing wage either by a provision within the charter or by ordinance have not succeeded. The Committee does not believe this feature can be achieved.

Analysis

The risks of being a charter city relate to amendments that constrain government actions in a manner that may not benefit the population. Two cities we interviewed have binding arbitration amendments included in their charters. While the binding arbitration procedure is used infrequently, city staffs believe that its existence has pushed their Councils to adopt compensation packages that are more expensive than might have existed otherwise. Another city has a land use provision in its charter that has hampered the planning for an abandoned military base in its jurisdiction. A fourth municipality has a charter provision that requires voter approvals for all rezoning, and has the Council rather than City Manager appoint department heads.

These risks may not occur. Most cities report very few if any amendments, and that the amendments that have been placed on the ballot in the past 10 years have been sponsored by the City Council or a Charter Committee appointed by the Council.

The Committee carefully weighed the risks versus the benefits of becoming a charter city. The Committee recognized that the recently completed Finance Committee study showed there are substantial unfunded needs that the current city revenues cannot cover such as road repairs, police services, and the purchase of open space, to name a few. The Finance Committee also concluded that there are not areas in the city budget in which the city can reduce costs sufficiently in order to cover the costs of the above-mentioned needs. Since the Finance Committee completed its work, potential raids by state government on funds the City receives through the state, e.g., gas taxes and property taxes, show the importance of having revenue streams that are controlled locally.

Therefore, the Charter City Committee recommends that the City Council place a measure on the November 2010 ballot that would ask the citizens of Lafayette to begin to take control of their own destiny by becoming a Charter City.

The Committee also recommends that a separate measure be placed on the same ballot, with a severability clause, that would enable the City Council to raise the current property transfer tax from 0.055% to amount deemed appropriate by the City Council prior to the election.

Finally, we would ask that in order to gauge citizen awareness of and attitudes towards a property transfer tax, questions regarding such a tax be included in the survey that we understand the Open

Space Committee plans to conduct. There is relevance to that committee's work because proceeds from a property transfer tax can be used to purchase open space. The Committee will meet to assess the implications of the survey results in the fall.

The Committee is also seeking direction from the Council as to whether it would like the Committee to prepare a draft charter for public and Council review once the Committee reconvenes in the fall.

The second part of the Committee's work is to determine how the City can communicate with residents more effectively. We propose to take up that issue in the fall when fewer Committee members will be traveling.

Recommendation

1. Place a measure on the November 2010 ballot asking Lafayette residents to approve a charter.

2. Place an additional measure on the November 2010 ballot authorizing the city to increase the property transfer tax.

3. Conduct a community survey as part of the Open Space poll to determine attitude towards and tolerance for increased property transfer tax.

4. Provide direction to the Committee regarding a draft charter.

Appendix A
Charter City Committee Members & Bios

Chair, Cheryl Noll, Lafayette resident for 15 years.
Ms. Noll has a law degree from University of San Diego and political science degree from Cal Poly. She is a current board member of the Lafayette Community Foundation, serves on the Governance Committee for the Lafayette Library and Learning Center Foundation and was Chairperson for Measure E ($93 million bond campaign for Acalanes School District in 2008)

Vice-Chair, Yolanda Vega, Performance and Learning Internal Consultant for BART, Lafayette resident for 27 years.
Ms. Vega has an MBA from St. Mary's. She is a Committee Member for Transportation Authority Advisory Board, Co-Chair of CCC Workforce Development Board Youth Council, Board Member of St. Mary's College - CILSA Committee and former Vice President of the American Society of Training & Development - Mt. Diablo Chapter

Sereta Churchill, realtor, Lafayette resident for 37 years
Ms. Churchill served on the Blue Ribbon Downtown Task Force (1982) and the Economic Development Committee. She is a past President of the Chamber of Commerce, former Business Person of the Year, and currently serves on the Board of Directors for the Lafayette Community Foundation.

Rod De La Rosa, Senior External Affairs Director for T-Mobile, Lafayette resident for 11 years.
Mr. De La Rosa has a Bachelor's degree in Regional & City Planning from Cal Poly. In his current role, he works with elected officials and members of the business community on legislation affecting wireless infrastructure in addition to being designated as a media spokesperson for the company.

Daniel Deitrick, Financial Advisor at Morgan Stanley, Lafayette resident for 20 years.
Mr. Deitrick most recently served as the Chair of the Lafayette Finance Review Committee. He is a former member of the Natomas Chamber of Commerce and has worked closely with several local municipalities through the design, planning and construction of three commercial buildings.

Reid Edwards, Senior Director of Governmental Affairs for Risk Management Solutions, Inc. Lafayette resident for 25 years.
Mr. Edwards has extensive experience developing positive public relations with Federal, State and local institutions. He served as Oakland Chamber of Commerce Board Chairman (2006-2008) and Berkeley Chamber of Commerce Board Chairman (2000-2003).

James Hamill, General Counsel/Program Manager for US Communities/California Communities, Lafayette resident for 3 years.
Mr. Hamill has worked with cities, counties and other local agencies in California and across the country to draft legislation, work with attorneys and legislators and assist public agencies with financing for public infrastructure.

Judy Garvens, retired, Lafayette resident for 39 years.
Ms. Garvens is a former Lafayette Councilmember (1993-1997) and Mayor (1996). She was Lafayette Citizen of the Year (1992) and served on the Lafayette Planning Commission for 10 years. She currently serves on the board of the Friends of the Lafayette Library

Elizabeth Johnson, urban planner, Lafayette resident for 8 years.
Ms. Johnson has 23 years experience working with public agencies, non-profits and private consulting firms. Most recently she was the Base Reuse Planner for the City of Alameda and also now serves on the Lafayette Open Space Committee.

Greg Woehrle, real estate developer, Lafayette resident for 19 years.
Mr. Woehrle is a Lafayette Chamber of Commerce board member, local land owner, commercial building and business owner.

Appendix B
Samples of City Charters

CITY OF SAN RAMON

PREAMBLE

The City of San Ramon was incorporated as a general law city in 1983 by residents seeking the right to manage local affairs. The authority of general law cities has diminished as a result of increasing State mandates and involvement in local matters. In order to reclaim the local autonomy sought through incorporation and to preserve the right of the people to present grievances to the most responsive level of government, we, the citizens of San Ramon, enact this Charter.

ARTICLE 1
Acceptance of Home Rule

Except as restricted by this Charter, the City shall have all powers allowable under the Constitution of the State of California to adopt ordinances, establish rules, grant franchises, structure City government, and in every way to govern the municipal affairs of the City. Municipal affairs encompass all matters of local concern as determined by the City Council consistent with the meaning of "municipal affairs" under the constitutional, statutory, and judicially defined law of the State of California.

Nothing in this Charter is intended to restrict the City in exercising any right, power or authority granted under the general laws of the State of California. However, the provisions of this Charter shall prevail in the event of any conflict with general law.

ARTICLE II
Structure of City Government

The City shall continue to be governed by a council of five members, four Councilmembers and a Mayor, elected at large. The City Council shall appoint a City Manager and a City Attorney. The City Manager, as the chief administrative officer of the City, shall appoint all department heads other than the City Attorney. Involvement in administrative matters by the Council or by any individual Councilmember shall occur only by direction of the City Manager.

ARTICLE III
Selection of Mayor

The Mayor shall be elected by plurality at an election to be held every two years. No elected Mayor shall serve for more than four two year terms or eight years total. Duties of the elected mayor for the City of San Ramon shall remain the same as the duties as of January 1, 2001. Compensation for the elected mayor of San Ramon shall be one hundred dollars per month more than a city Councilmember. The position of elected Mayor will become effective at the first San Ramon regular municipal election following adoption of this charter amendment where three city council seats are up for election. One of these three seats will become the elected mayor position.

ARTICLE IV
Public Contracting

The City Council, by ordinance, shall establish the procedures, including any competitive bidding requirements, to be followed by the City in awarding public contracts of any nature, including those for construction of public works.

ARTICLE V
Continuation of Existing Law

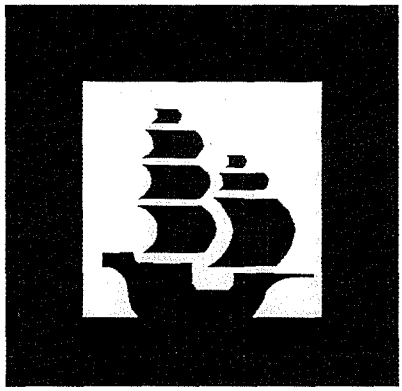
All ordinances, resolutions, rules and regulations of the City in effect as of the effective date of this Charter shall continue in effect until repealed or amended.

ARTICLE VI
Interpretation

The provisions of this Charter shall be interpreted broadly to favor the exercise of home rule. If any provision is found by a court to be invalid, the remaining provisions of the Charter shall remain in full force and effect.

Dated: November 4, 1997
Amended: November 6, 2001

CHARTER OF THE CITY OF SANTA MARIA CALIFORNIA



AS ADOPTED BY THE ELECTORATE OF THE
CITY OF SANTA MARIA
AT THE GENERAL MUNICIPAL ELECTION
HELD NOVEMBER 7, 2000

CHARTER OF THE CITY OF SANTA MARIA

PREAMBLE

We, the people of the City of Santa Maria, declare our intent to restore our community to the historic principles of self-governance inherent in the doctrine of home-rule. We are sincerely committed to the belief that local government has the closest affinity to the people governed, and firm in the conviction that the economic and fiscal independence of our local government will promote the health, safety, and welfare of all the citizens of this City. We do hereby exercise the express right granted by the Constitution of the State of California to enact and adopt this Charter for the City of Santa Maria.

ARTICLE I. MUNICIPAL AFFAIRS

Section 100. Municipal Affairs.

The City shall have full power and authority to adopt, make, exercise, and enforce all legislation, laws, and regulations and to take all actions relating to municipal affairs which may be lawfully adopted, made, exercised, taken or enforced under the Constitution of the State of California. Without limiting in any manner the foregoing power and authority, each of the powers, rights, and responsibilities described in this Charter is hereby declared to be a municipal affair, the performance of which is unique to the benefit and welfare of the citizens of the City of Santa Maria.

ARTICLE II. GENERAL LAWS

Section 200. General Law Powers.

In addition to the power and authority granted by the terms of this Charter and the Constitution of the State of California, the City shall have the power and authority to adopt, make, exercise and enforce all legislation, laws and regulations and to take all actions and to exercise any and all rights, powers, and privileges heretofore or hereafter established, granted or prescribed by any law of the State of California or by any other lawful authority. In the event of any conflict between the provisions of this Charter and the provisions of the general laws of the State of California, the provisions of this Charter shall control.

ARTICLE III. AMENDMENTS

Section 300. Amendment to Charter, Revised or Repealed.

This Charter, and any of its provisions, may be amended by a majority vote of its electors voting on the question. Amendment or repeal may be proposed by initiative or by the governing body.

ARTICLE IV. INTERPRETATION

Section 400. Construction and Interpretation.

The language contained in this Charter is intended to be permissive rather than exclusive or limiting and shall be liberally and broadly construed in favor of the exercise by the City of its power to govern with respect to any matter which is a municipal affair.

Section 401. Severability.

If any provision of this Charter should be held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions shall remain enforceable to the fullest extent permitted by law.

ARTICLE V. REVENUE RETENTION

Section 500. Reductions Prohibited.

Any revenues accrued to and/or collected by the City shall not be subject to subtraction, retention, attachment, withdrawal or any other form of involuntary reduction by any other level of government.

Section 501. Mandates Limited.
No person, whether elected or appointed, acting on behalf of the City, shall be required to perform any function which is mandated by any other level of government, unless and until funds sufficient for the performance of such function are provided by said mandating authority.

ARTICLE VI. COST SAVINGS AND EFFICIENCIES

Section 600. Public Works Contracts.
The City shall have the power to establish standards, procedures, rules or regulations to regulate all aspects of the bidding, award and performance of any public works contract, including, but not limited to, the compensation rates to be paid for the performance of such work, and the establishment of local preferences.

Section 601. Purchasing.
The City shall have the power to establish standards, procedures, rules, or regulations related to the purchasing of goods, property, or services, including, but not limited to, the establishment of local preferences.

Section 602. Public Financing.
The City shall have the power to establish standards, procedures, rules, or regulations related to any public financing.

Section 603. Utility Franchises.
The City shall have the power to adopt ordinances providing for the acquisition, development, or operation by the City of any utility, or any ordinance providing for the granting of a franchise, license, permit, or easements to any utility which proposes to use or is using City streets, highways, or other rights-of-way.

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Certification

Pursuant to Government Code Section 34460, the undersigned officers of the City of Santa Maria hereby certify that the foregoing Charter of the City of Santa Maria was approved by the voters of the City at an election duly called and held on November 7, 2000 in the City of Santa Maria pursuant to Section 15301, et seq. of the California Elections Code.

Donald E. Lahr — 12/7/00
Donald E. Lahr, Mayor — Date

Stephanie Swarner — 12/7/00
Stephanie Swarner, City Clerk — Date

ATTEST:
Stephanie Swarner — 12/7/00
Stephanie Swarner, City Clerk — Date

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Filed with and chaptered by the California Secretary of State, and effective on the 12th day of December in the year 2000.